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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,984	06/28/2001	Stephen D. Ainsworth	ACS-55940	3805
24201 7590 04/16/2008 FULWIDER PATTON LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE, TENTH FLOOR LOS ANGELES, CA 90045			EXAMINER GANESAN, SUBA	
			ART UNIT 3774	PAPER NUMBER
			MAIL DATE 04/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/894,984	Applicant(s) AINSWORTH ET AL.	
	Examiner SUBA GANESAN	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/7/2008 has been entered.

Response to Amendment

2. The declaration filed on 9/19/2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Burgermeister patent (U.S. Pat. No.: 6,790,227) reference. However, it is noted that the claim amendments dated 1/7/2008 are sufficient to overcome the Burgermeister patent.

3. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Burgermeister reference. The evidence fails to establish a constructive or actual reduction to practice.

4. The evidence contains a reference to a parent application (pg. 2 line 8) yet the application does not claim priority to any parent application. Clarification is requested.

5. The evidence submitted has not been signed by all inventors.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 3-8, 10-13, 15-16, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Gomez et al. (U.S. Pat. No.: 6,629,994).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Gomez discloses a stent (figs. 6A-6B) comprising a cylindrical body having a plurality of rings with first and second peaks. At least one link 54 with an undulating portion connects a second peak of one ring with a second peak of another ring. At least one peak adjacent each link has struts defining a shorter longitudinal length than another first peak adjacent the link to thereby provide space for the undulating portion (figs. 6A-6B). Each link 54 has two circumferentially extending transitions 58. Of the plurality of second peaks, only the second peaks of adjacent rings connected by links

are in phase (fig. 6B). The stent is stainless steel (col. 3 lines 41-45). The Examiner is considering Gomez to disclose links with three circumferential transitions (col. 7 lines 43-45 and figs. 1-5 and fig. 17) because increasing the number of straight portions of a link would necessarily result in a link with at least three circumferential transitions. All of the second peaks of adjacent links are connected by links (fig. 6B). Each of the plurality of first peaks of adjacent rings are out of phase (fig. 6B). Each ring has six second peaks and six first peaks, three of the first peaks having shorter struts than struts defining other first peaks and spaced in an alternating pattern around a circumference of the ring (fig. 6A). The struts have varied thicknesses and widths (see fig. 18).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 14 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gomez et al. (U.S. Pat. No.: 6,629,994).

10. Gomez is explained supra. However Gomez appears to lack links with varied lengths and a stent wherein at least one ring has a different number of first or second peaks than another ring of the stent. Gomez teaches that the number of bends and straight portions in a link can be increased or decreased to achieve differing flexibility constructions. Therefore it would have been obvious to one of ordinary skill in the art at

the time the invention was made to have provided links with varied length for the purpose of modifying the flexibility and performance of the stent.

11. It would have further been obvious to one of ordinary skill in the art at the time the invention was made to have provided the stent of Gomez with at least one ring having a different number of first or second peaks for the purpose of creating a variable diameter stent in order to approximate the implanted environment's healthy shape. Such a change would have been a matter of obvious design choice to one of ordinary skill in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUBA GANESAN whose telephone number is (571)272-3243. The examiner can normally be reached on M-F 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3774

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Suba Ganesan/
Examiner, Art Unit 3774

/William H. Matthews/
Primary Examiner, Art Unit 3774